IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8404 OF 2005

M/s. Shriram Transport
Finance Co. Ltd., & Anr. .. Petitioners.

vs.

Anjuman Rehman S/o.
Aziz-Ur-Rehman & Ors. .. Respondents.

Mr. S.P. Bharti for petitioners.
Mr. P. Mishra i/by M/s. V. Mishra & Co.
for respondent no.1.

CORAM : S.U. KAMDAR, J.
DATE : 12th December, 2005.

P.C.:

. By the present petition an order passed on notice of Motion No. 3676 of 2005 dated 28.10.2005 is challenged. The application was taken out under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the disputed to arbitration in view of arbitration clause being clause 15 of the loan cum hypothecation agreement dated 30.11.2003. There is no dispute as to the arbitration agreement as recorded by the trial Court. However, the trial

Court has rejected the application on the ground that the genuineness of the agreement is in dispute. In my opinion, even if it is so, the provisions of the Arbitration and Conciliation Act, 1996 shall apply and all the issues are to be referred to the arbitration including the fact that arbitration agreement exists or not. In that light of the matter, the impugned order passed by the trial Court on 28.10.2005 is unsustainable in law and the same is liable to be quashed and set aside. S.C. Suit No. 3496 of 2005 is referred to the arbitration of Mr. Sanjay Kothari, Advocate who shall determine the differences and disputes between the parties. The Arbitrator to proceed in accordance with the provisions of the Arbitration and Conciliation Act, 1996. It is made clear that the petitioner will not take possession of the vehicle for a period of four weeks from today. In the meantime, the respondent will be at liberty to make necessary application either under Section 9 or Section 17 of the Arbitration and Conciliation Act, 1996. Petition disposed of accordingly. No order as to costs.